

MILLESSA OBERHAUSER &
STEVE OBERHAUSER,
Plaintiffs,

v.

KYLE GARRETT TOMCHESSON,
AMAZON.COM, INC., &
SCOOBEEZ, INC.
Defendants.

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IN THE DISTRICT COURT

261st JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

PLAINTIFFS' SECOND AMENDED PETITION

Plaintiffs Millessa Oberhauser and Steve Oberhauser (collectively, "Plaintiffs") file their Second Amended Petition against Defendants Kyle Garrett Tomchesson ("Tomchesson"), Amazon.com, Inc. ("Amazon"), and Scoobeez, Inc. ("Scoobeez") (collectively, "Defendants"), and would respectfully show the Court as follows:

I. DISCOVERY LEVEL AND RULE 47(C) DISCLOSURE

1. Discovery in this case is intended to be conducted under a Level 3 discovery control plan under Texas Rules of Civil Procedure Rule 190.

2. Plaintiffs seeks monetary relief over \$200,000 but not more than \$1,000,000.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter because the amount sought is within the jurisdictional limits of this Court.

4. Venue is proper in Travis County pursuant to Texas Civil Practice and Remedies Code Section 15.002 because the events and omissions giving rise to this lawsuit occurred in Travis County, Texas.

III. PARTIES

5. Plaintiff Millessa Oberhauser is an individual residing in Travis County, Texas.

6. Plaintiff Steve Oberhauser is an individual residing in Travis County, Texas.

7. Defendant Kyle Garrett Tomchesson is an individual residing in Montgomery County, Texas. Tomchesson has answered and appeared in this lawsuit.

8. Defendant Scoobeez, Inc. is a business incorporated in California doing business in Texas. Scoobeez has answered and appeared in this lawsuit. Scoobeez filed Chapter 11 bankruptcy on April 30, 2019 in the Central District of California.

9. Defendant Amazon.com, Inc. is a foreign business incorporated in Washington doing business in Texas. This Defendant may be served by serving its registered agent, Corporation Service Company, at 300 Deschutes Way SW, Suite 304, Tumwater, WA 98501.

IV. SUMMARY OF PETITION

10. This case involves significant property damage to Plaintiffs' home that occurred when an Amazon delivery van driven by a Scoobeez employee crashed into Plaintiffs' home. The collision could have been avoided if it wasn't for Amazon's and Scoobeez's grossly negligent business practices. Amazon hires last-mile delivery

companies such as Scoobeez to deliver Amazon packages. Amazon's grossly negligent business practices predisposed Scoobeez to operate its business in a grossly negligent manner. Amazon simultaneously requires Scoobeez to deliver Amazon packages as fast as possible while not imposing any safety requirements on Scoobeez to ensure packages are delivered in a safe manner. In turn, Scoobeez attempts to conform to Amazon's expectations by requiring its drivers to deliver over 250 packages in a normal nine-hour shift. This de facto quota places extreme pressure on its employees to deliver an inordinate number of packages within an impossible amount of time—**allotting less than two minutes of delivery time per package**. Moreover, Scoobeez provides minimal or no training to its drivers before they begin delivering packages in this pressure packed environment, and it does not regularly or randomly drug test its drivers—even after a collision such as the one that occurred here. Scoobeez also fails to provide an efficient delivery route and additional compensation to its employees for additional time to deliver packages. The culmination of Amazon's and Scoobeez's grossly negligent business practices resulted in the collision on June 26, 2018, causing severe damage to Plaintiffs' home.

V. FACTS

A. THE COLLISION

11. On June 26, 2018, Tomchesson drove his delivery van into Plaintiffs' driveway to deliver an Amazon package. Plaintiffs' home is located at the bottom of a steep driveway. The van was facing downhill and towards Plaintiffs' home when Tomchesson exited the vehicle to deliver a package to Plaintiffs. After Tomchesson

exited the van, the van rolled down Plaintiffs' driveway and crashed into Plaintiffs' home. The van hit Plaintiffs' home with such force that its airbags deployed and became lodged in Plaintiffs' home.



Figure 1 - Photograph of damage to Tomchesson's van



Figures 2 - Photograph of van lodged in Plaintiffs' home.

B. THE POST-COLLISION SCENE

12. Plaintiff Millessa Oberhauser arrived at her home soon after the collision. Tomchesson told Mrs. Oberhauser he was planning on leaving the scene and placing a note on the van because he had other deliveries to make. Tomchesson had already called another Scoobeez delivery driver to pick up the remaining packages in his van. Tomchesson asked Mrs. Oberhauser if he could leave the scene before the tow truck arrived, but Mrs. Oberhauser insisted he stay to speak with police and ensure the van was towed away.

13. When police arrived at the scene, Tomchesson provided his driver's license and certificate of self-insurance.



Figure 3 - Kyle Garret Tomchesson's Driver License

Tomchesson told police he was surprised they were not drug testing him to see if he had been under the influence of drugs or alcohol, to which the investigating officer replied that drug testing was the responsibility of his employer. Tomchesson also told police he was not sure if he had placed the van in park or neutral because he was in a hurry.

C. THE DAMAGES

14. After the tow truck removed the van from Plaintiffs' residence, Plaintiffs discovered the full extent of the damage to Plaintiffs' home. The collision caused significant structural and cosmetic damage to Plaintiffs' home. The van collided with the left front corner section of Plaintiffs' garage. The impact not only destroyed the brick veneer on the garage, but also caused cracks to the brick on the front and side of the garage. The impact also damaged the structural frame of the home.



Figure 4 - Photograph of damages to the front of Plaintiffs' garage and antifreeze spill



Figure 5 - Photograph of damages to the side of Plaintiffs' garage and antifreeze spill



Figures 6 & 7 - Photographs of cracks in brick veneer above Plaintiffs' laundry room window



Figure 8 - Photograph of cracks in brick veneer beneath Plaintiffs' laundry room window

15. In addition to the garage and brick damages, the adjoining areas of the home, including the kitchen, utility room, garage closet, and pantry, have shifted and

the walls have cracked. Further damage to Plaintiffs' home includes certain doors not closing, which is highly unusual because the home has a slab foundation.



Figures 9 & 10 - Photographs of cracked walls inside Plaintiffs' garage and laundry room



Figure 11 - Photograph of cracked walls inside Plaintiffs' garage



Figure 12 - Photograph detailing shift in framing of Plaintiffs' home

16. The structural integrity of the exterior load-bearing walls and various interior walls have been structurally compromised and need repair or replacement. The full extent of the damage to the home cannot be determined without removal of masonry veneer, weather penetration barriers, and interior sheetrock.

D. AMAZON'S AND SCOOBEEZ'S HAZARDOUS BUSINESS PRACTICES

17. Amazon hires last-mile delivery companies such as Scoobeez to deliver Amazon packages. Amazon places enormous pressure on Scoobeez to deliver Amazon packages as fast as possible regardless of the risk to the safety and welfare of delivery drivers and Amazon's own customers. Upon information and belief, Amazon does not

impose any safety requirements on Scoobeez to ensure Scoobeez's delivery drivers deliver Amazon packages in a safe manner. Upon information and belief, Amazon's and Scoobeez's business practices include:

- (a) Allowing their drivers to drive malfunctioning vans that are in disrepair;
- (b) Not requiring nor incentivizing delivery drivers to watch safety videos;
- (c) Failing to regularly drug test delivery drivers;
- (d) Failing to require that their delivery drivers take a drug test following a collision;
- (e) Not requiring drivers to take lunch breaks;
- (f) Refusing to provide workers' compensation benefits;
- (g) Placing extreme pressure on their delivery drivers to deliver over 250 packages per day; and
- (h) Requiring drivers to deliver more packages than they safely can during their shifts but refusing to pay their drivers for the additional time it often requires to deliver all of the packages.

18. Tomchesson was hurried on the day of the collision because Scoobeez required him to deliver an inordinate number of packages within an impossible amount of time. According to Tomchesson's sworn testimony, Scoobeez required Tomchesson to deliver over 250 packages between 9:00 a.m. and 6:00 p.m. If one hour is subtracted for a lunch break, and assuming Scoobeez required Tomchesson to

deliver no more than 250 packages, Tomchesson would have to deliver a package every 1.92 minutes to deliver 250 packages before 6:00 p.m. Additionally, according to its sworn testimony, Scoobeez did not provide Tomchesson a specified route on the day of the collision on which to deliver the packages. Therefore, in addition to placing extreme pressure on Tomchesson to deliver packages within an impossible amount of time, Scoobeez did not provide Tomchesson an efficient route on which to deliver his packages. During Tomchesson's employment, and even after the collision, Scoobeez failed to drug test Tomchesson to determine whether Tomchesson might have been under the influence of anything other than the immense pressure Amazon and Scoobeez places on its drivers.

VI. CAUSES OF ACTION

19. In support of each cause of action, Plaintiffs re-allege the facts as set forth above.

NEGLIGENCE AGAINST TOMCHESSON

20. Tomchesson was operating the delivery van in a negligent manner when the van crashed into Plaintiffs' home.

21. Tomchesson owed Plaintiffs a duty of ordinary care to operate the van in a reasonable and prudent manner. Tomchesson breached this duty by leaving the van on Plaintiffs' steep driveway without taking the necessary precautions to prevent the van from rolling down the driveway and crashing into Plaintiffs' home.

22. Among the ways in which Tomchesson breached his duty of ordinary care include:

- a. Failing to place the vehicle in park;
- b. Failing to apply the parking brake;
- c. Failing to park the vehicle in a location that did not pose a risk of rolling; and
- d. Failing to turn the van off.

23. In fact, Tomchesson acknowledges that he left the van in neutral at the top of a hill in Plaintiffs' driveway.

24. These failures by Tomchesson, whether taken singularly, or in combination, constitute negligence and were a proximate cause of Plaintiffs' damages.

NEGLIGENCE AGAINST AMAZON

25. Amazon was operating its business in a negligent manner when the delivery van crashed into Plaintiffs' home.

26. Amazon owed a duty of ordinary care to Plaintiffs to operate its business in a reasonable manner that would not cause harm to the public.

27. Among the ways in which Amazon failed to operate its business in a reasonably prudent manner include:

- a. Amazon placed pressure on Scoobeez to deliver an inordinate number of packages in an impossible amount of time. Amazon's pressure influenced Scoobeez to require its drivers to deliver more than 250 packages per day. These delivery requirements caused Tomchesson to feel hurried and not take the necessary

precautions before exiting his van to deliver a package at Plaintiffs' home.

- b. Amazon did not impose safety requirements on Scoobeez to ensure Scoobeez's drivers deliver Amazon packages in a safe manner.

28. Amazon's actions, whether taken singularly, or in combination, constitute negligence and were a proximate cause of Plaintiffs' damages.

NEGLIGENCE AGAINST SCOOBEEZ

29. Scoobeez was operating its business in a negligent manner when the delivery van crashed into Plaintiffs' home.

30. Scoobeez owed a duty of ordinary care to Plaintiffs to operate its business in a reasonable manner that would not cause harm to the public.

31. Among the ways in which Scoobeez failed to operate its business in a reasonably prudent manner include:

- a. Scoobeez placed extreme pressure on their delivery drivers to deliver more than 250 packages per day. It was these demands from Scoobeez that caused Tomchesson to feel hurried and not take the necessary precautions before exiting his van to deliver a package at Plaintiffs' home.
- b. Scoobeez allows its delivery drivers to operate malfunctioning vans.

32. Scoobeez's actions, whether taken singularly, or in combination, constitute negligence and were a proximate cause of Plaintiffs' damages.

NEGLIGENT SUPERVISION AGAINST AMAZON

33. Amazon retained supervisory control over its contractor, Scoobeez, in a negligent manner when the van crashed into Plaintiffs' home.

34. Amazon owed a duty to Plaintiffs to exercise its supervisory control with reasonable care to ensure that Scoobeez delivered Amazon packages in a reasonable manner.

35. Among the ways in which Amazon failed to exercise its supervisory control with reasonable care include:

- a. Allowing Scoobeez to require its drivers to deliver more than 250 packages per day;
- b. Allowing Scoobeez to deliver packages with malfunctioning vans;
- c. Failure to require Scoobeez to regularly or randomly drug test its delivery drivers;
- d. Failing to require Scoobeez to drug test its delivery drivers following a collision;
- e. Failure to require Scoobeez to properly train and supervise its drivers; and
- f. Failure to require Scoobeez to provide routes on which drivers should deliver assigned packages.

36. These acts and omissions by Amazon, whether taken singularly, or in combination, constitute negligent supervision and were a proximate cause of Plaintiffs' damages.

NEGLIGENT SUPERVISION AGAINST SCOOBEEZ

37. Scoobeez supervised their employee, Tomchesson, in a negligent manner when the van crashed into Plaintiffs' home.

38. Scoobeez employs delivery drivers to deliver Amazon packages to Amazon customers. Scoobeez owed a legal duty to Plaintiffs to reasonably supervise its employees in carrying out deliveries. Scoobeez's breaches of its duty owed to Plaintiffs include:

- a. Requiring drivers to deliver more than 250 packages per day;
- b. Allowing delivery drivers to operate malfunctioning vans;
- c. Failure to regularly or randomly drug test delivery drivers;
- d. Failing to require that their delivery drivers take a drug test following a collision;
- e. Failure to properly train and supervise its drivers; and
- f. Failure to provide routes on which drivers should deliver assigned packages.

39. These actions and omissions by Scoobeez, whether taken singularly, or in combination, constitute negligence and were a proximate cause of Plaintiffs' damages.

NEGLIGENT HIRING AND RETENTION AGAINST AMAZON

40. Amazon's and Scoobeez's acts and omissions as set forth in preceding paragraphs are incorporated herein by reference.

41. Amazon negligently hired and retained its contractor, Scoobeez, to deliver Amazon packages.

42. Amazon owed a duty to Plaintiffs to hire and retain its contractor, Scoobeez, with ordinary care and reasonable inquiry.

43. Amazon breached its duty to Plaintiffs because it knew or should have known Scoobeez was unfit to deliver Amazon packages in a reasonable manner.

44. Amazon's negligent hiring and retention of Scoobeez was the proximate cause of Plaintiffs' damages.

GROSS NEGLIGENCE

45. Defendants' acts and omissions as set forth in preceding paragraphs are incorporated by reference.

46. Defendants' acts and omissions, when viewed from Defendants' standpoint at the time they occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiffs. Defendants had actual, subjective awareness of the risks associated with the hurried conditions under which Scoobeez and Tomchesson delivered packages, but proceeded with conscious indifference to the rights, safety, or welfare of others, including Plaintiffs. Accordingly, Defendants' acts and omissions on the date of the collision constitute gross negligence and proximately caused Plaintiffs' damages.

47. Defendants' acts and omissions are sufficient, under Chapter 41 of the Texas Civil Practices and Remedies Code, to justify the imposition of punitive damages against the Defendants.

RES IPSA LOQUITUR AGAINST DEFENDANTS

48. Defendants are liable to Plaintiffs under the doctrine of res ipsa loquitur.

49. The delivery van crashing into Plaintiffs' home is the type of collision that would not ordinarily occur in the absence of negligence. And the van that damaged Plaintiffs' home was under Defendants' control and management of Defendants.

VII. VICARIOUS LIABILITY

50. Scoobeez is vicariously liable for the negligent acts and omissions of its agents and employees, including Tomchesson, under the legal theory of respondent superior.

51. Amazon is vicariously liable for the negligence of Scoobeez and Tomchesson. Amazon retained some control over the manner in which Scoobeez performed the work that caused Plaintiffs' damages. Amazon exercised supervisory control over Scoobeez and Tomchesson, controlled the details of their work to such an extent that they could not perform the work as they chose, and had the power to forbid both Scoobeez and Tomchesson to perform the work in the dangerous manner in which the work was performed. Amazon, therefore, is vicariously liable for the negligence of Scoobeez that caused the damages to Plaintiffs. Amazon is also

vicariously liable for Tomchesson's negligence, which proximately caused Plaintiffs' damages.

VIII. JURY DEMAND

52. Plaintiffs request a trial by jury and tender the appropriate fee with this petition.

IX. REQUEST FOR DISCLOSURE

53. Plaintiffs request that Amazon disclose, within fifty (50) days of service of this Second Amended Petition, the information and material described in Rule 194.2 of the Texas Rules of Civil Procedure.

PRAYER

WHEREFORE Plaintiffs pray that Defendants be cited to appear and answer, and that on final trial, Plaintiffs have:

- 1) A finding that Defendants are jointly and severally liable for Plaintiffs' damages;
- 2) Damages within the jurisdictional limits of the Court;
- 3) Punitive damages;
- 4) Pre-judgment and post-judgment interest; and
- 5) All other relief in law or in equity to which Plaintiffs show themselves entitled.

Respectfully submitted,

/s/ Yusuf A. Bajwa

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CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing document has been served on this 22nd day of May 2019, pursuant to the Texas Rules of Civil Procedure.

Via E-Service

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